



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 52**

[EPA-R06-OAR-2005-NM-0008; FRL- 9684-5]

#### **Approval and Promulgation of Implementation Plans;**

#### **New Mexico; Minor New Source Review (NSR) Preconstruction Permitting Rule for Cotton Gins**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking a direct final action to approve a revision to the applicable minor New Source Review (NSR) State Implementation Plan (SIP) for New Mexico submitted by the state of New Mexico on April 25, 2005, which incorporates a new regulation related to minor NSR preconstruction permitting for particulate matter emissions from cotton ginning facilities. The submitted Cotton Gin regulation provides an alternative preconstruction process for cotton ginning facilities that will emit no more than 50 tons per year of particulate matter. The new regulation prescribes, at a minimum, best technical control equipment standards, opacity limitations, and fugitive dust management plan requirements to minimize particulate matter emissions and establishes a minimum setback distance from the gin to the property line. EPA has determined that this SIP revision complies with the Clean Air Act and EPA regulations and is consistent with EPA policies. This action is being taken under section 110 of the Act.

**DATES:** This direct final rule is effective on **[Insert date 60 days from date of publication in the Federal Register]** without further notice, unless EPA receives relevant adverse comment by **[Insert date 30 days from date of publication in the Federal Register]**. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R06-OAR-2005-NM-0008, by one of the following methods:

- (1) [www.regulations.gov](http://www.regulations.gov) : Follow the on-line instructions for submitting comments.
  - (2) E-mail: Ms. Ashley Mohr at [mohr.ashley@epa.gov](mailto:mohr.ashley@epa.gov).
  - (3) Fax: Ms. Ashley Mohr, Air Permits Section (6PD-R), at fax number 214-665-6762.
  - (4) Mail: Ms. Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
  - (5) Hand or Courier Delivery: Ms. Ashley Mohr, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.
- Such deliveries are accepted only between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R06-OAR-2005-NM-0008. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute.

Do not submit information through <http://www.regulations.gov> or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The <http://www.regulations.gov> website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 AM and 4:30 PM weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment

at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

New Mexico Environment Department, Air Quality Bureau, 1301 Siler Road, Building B, Santa Fe, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning today's direct final action, please contact Ms. Ashley Mohr (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, Texas 75202-2733, telephone (214) 665-7289; fax number (214) 665-6762; email address [mohr.ashley@epa.gov](mailto:mohr.ashley@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document the following terms have the meanings described below:

- “we”, “us” and “our” refer to EPA.
- “Act” and “CAA” mean the Clean Air Act.
- “40 CFR” means Title 40 of the Code of Federal Regulations – Protection of the Environment.
- “SIP” means the State Implementation Plan established under section 110 of the Act.

- “NSR” means new source review.
- “TSD” means the Technical Support Document for this action.
- “NAAQS” means any national ambient air quality standard established under 40 CFR part 50.

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### **I. What Action is EPA Taking?**

We are taking direct final action to approve a revision to the applicable minor New Source Review (NSR) State Implementation Plan (SIP) for New Mexico submitted by the state of New Mexico on April 25, 2005, which incorporates a new regulation related to minor NSR preconstruction permitting for cotton ginning facilities that are minor stationary sources with particulate matter emissions no more than 50 tons per year. The April 25, 2005, SIP submittal

includes the incorporation of the new Cotton Gin regulation in 20.2.66 of the New Mexico Administrative Code (NMAC), also known as Part 66.

Our technical analysis of the April 25, 2005, SIP rule revision submittal has found that the new Part 66, containing the Cotton Gin regulation, meets the CAA and 40 CFR Part 51. Therefore, EPA is taking direct final action to approve the incorporation of 20.2.66 NMAC, as submitted on April 25, 2005, into the New Mexico minor NSR SIP. We provide a summary of the reasoning comprising our evaluation in this rulemaking, as well as, a more detailed evaluation and analysis in the Technical Support Document (TSD) for this rulemaking.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. As explained in our TSD, we are finding this action noncontroversial because the Cotton Gin regulation is an established limited-scope regulation providing an alternative minor NSR preconstruction permitting approach for cotton ginning facilities that are minor stationary sources of particulate matter emissions. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication in the Federal Register]** without further notice unless we receive relevant adverse comment by **[FEDERAL REGISTER OFFICE: insert date 30 days from date of publication in the Federal Register]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we

receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## **II. What did New Mexico Submit?**

### *A. April 25, 2005, SIP Revision Submittal*

On April 25, 2005, the Governor of New Mexico submitted a revision to incorporate 20.2.66 NMAC – Cotton Gins into the New Mexico SIP. This submittal includes the following:

- *Addition of the following sections:* 20.2.66.1 NMAC – Issuing Agency; 20.2.66.2 NMAC – Scope; 20.2.66.3 NMAC – Statutory Authority; 20.2.66.4 NMAC – Duration; 20.2.66.5 NMAC – Effective Date; 20.2.66.6 NMAC – Objective; 20.2.66.7 NMAC – Definitions; 20.2.66.9 NMAC – Documents; 20.2.66.200 NMAC – Issuance of Permit under 20.2.72 NMAC; 20.2.66.201 NMAC – Permit Application Requirements; and 20.2.66.202 NMAC – Permit Requirements.
- Portions of the New Mexico Air Quality Control Act (AQCA), specifically the 2003 amendments to Section 74-2-7(C) and (O), related to permit issuance for cotton ginning facilities, as evidence of the legal authority for the State to adopt 20.2.66 NMAC – Cotton Gins.

A summary of EPA’s evaluation of the Cotton Gin regulation and the basis for this action is discussed in section III of this preamble. The TSD includes a detailed evaluation of the April 25, 2005, SIP submittal.

*B. What is the Cotton Gin Regulation?*

The Cotton Gin regulation, found in Part 66, provides an alternative process for owners and operators of cotton ginning minor stationary sources, as defined in Part 66, to obtain a minor NSR preconstruction permit for particulate matter emissions. The New Mexico Environmental Department (NMED) adopted 20.2.66 NMAC in response to 2003 amendments to the New Mexico Air Quality Control Act (AQCA), specifically, amendments to Sections 74-2-7(C) and (O). Sources that meet the cotton ginning facility definition defined in 20.2.66.7(C) and that elect to apply for a minor NSR preconstruction permit under Part 66, must meet the source-specific requirements contained in the Part, which include application requirements and permit requirements. A “cotton ginning facility” is defined in Part 66 as “any facility that separates seed, lint, and trash from raw cotton, and bales lint cotton for further processing.” To meet the definition of a “cotton ginning facility,” Part 66 also requires that the facility have the standard industrial classification code 0724 (cotton ginning) and the North American industrial standard classification code 11511 (cotton ginning). It must also have 50 tons per year or less of particulate matter emissions. A source that obtains a minor NSR preconstruction permit under Part 66 for its particulate matter emissions is also required to meet the applicable requirements contained in the SIP’s 20.2.72 NMAC – Construction Permits (Part 72) to obtain a minor preconstruction permit for its other emissions.

Part 66 specifies permit application requirements, particulate matter emission control requirements, opacity limitations, fugitive dust plan requirements, operating and location restrictions, and inspection and recordkeeping requirements for cotton ginning facilities seeking a minor preconstruction permit under 20.2.66 NMAC. The “best system” to minimize particulate matter emissions was determined by NMED to be, at a minimum, technical control



standards such as screens with a mesh size of 70 by 70 or finer (United States sieve) on low-pressure exhausts, and high-efficiency cyclone dust collectors on high-pressure exhausts. These control standards minimize particulate matter emissions. The new regulation also establishes minimum setback distance requirements for facilities obtaining a minor NSR preconstruction permit under Part 66. These requirements are specific to the control of emissions and minimization of impacts from particulate matter emissions from cotton gins emitting 50 tons per year or less, including particulate matter less than 10 microns in diameter (PM<sub>10</sub>) and particulate matter less than 2.5 microns in diameter (PM<sub>2.5</sub>). All other criteria pollutant emissions from cotton gins are required to be addressed via the requirements of the Part 72 preconstruction minor NSR permitting program that already is in the New Mexico SIP.

### **III. EPA's Evaluation**

#### *A. Technical Review of April 25, 2005, SIP Revision Submittal*

The April 25, 2005, SIP revision submitted by New Mexico to incorporate Part 66 in the State's minor NSR SIP establishes an alternative minor NSR preconstruction permitting approach for cotton gins that are minor sources of 50 tons per year or less of particulate matter emissions. The alternative minor NSR preconstruction permitting process contained in the Cotton Gin regulation provides cotton ginning facilities with an option to obtain a minor NSR preconstruction permit via the current minor NSR SIP's preconstruction case-by-case permitting program (Part 72) for all its emissions or to obtain a SIP Part 72 minor NSR preconstruction permit for all of its emissions except for its particulate matter emissions, for which it can obtain a minor NSR preconstruction permit via the alternative process contained in Part 66. As previously mentioned, those cotton gin sources obtaining a minor NSR permit under Part 66 for

their particulate matter emissions must also meet the applicable requirements of the SIP's Part 72 for all their other emissions. The Part 66 minor NSR preconstruction permitting process addresses particulate matter emissions from minor source cotton gins without requiring an air quality impact analysis demonstration, while the SIP's Part 72 rule addresses case-by-case preconstruction permitting determinations for all sources for all emissions and requires an analysis of the predicted air quality impact that generally is met by air dispersion modeling. As discussed later, EPA is finding that the submitted Part 66 is protective of the NAAQS and therefore no case-by-case air quality impact analysis is required for cotton gins covered under this rule.

As detailed in the TSD, the April 25, 2005, SIP submittal meets the completeness criteria established in 40 CFR 51, Appendix V. In addition to the completeness review, the Cotton Gin regulation SIP submittal was evaluated against the applicable requirements contained in the Act and 40 CFR 51. Section 110(a)(2)(C) of the Act requires, in part, that each implementation plan include a program to regulate the construction and modification of stationary sources, including a permit program as required by parts C and D of Title I of the Act, as necessary to assure that the NAAQS are achieved. Parts C and D, which pertain to prevention of significant deterioration (PSD) and nonattainment, respectively, address major NSR programs for stationary sources, and the permitting program for "nonmajor" (or "minor") stationary sources is also addressed by section 110(a)(2)(C) of the Act. We generally refer to the latter program as the "minor NSR" program. A minor stationary source is a source whose "potential to emit" is lower than the major source applicability threshold for a particular pollutant defined in the applicable major NSR program.

EPA's implementing regulations for minor NSR SIP revision submissions required by section 110(a)(2)(C) are found at 40 CFR 51.160 and are intended to ensure that new source growth is consistent with maintenance of the NAAQS. Therefore, we evaluated the submitted new rule using the federal regulations under CAA section 110(a)(2)(C), which require each State to include a minor NSR program in its SIP. EPA regulations require that a minor NSR program include:

- A plan that “must set forth legally enforceable procedures that enable” the permitting agency to determine whether a minor source will cause or contribute to a violation of applicable portions of the control strategy, 40 CFR 51.160(a)(1), or interference with attainment or maintenance of a NAAQS within the state or a neighboring state, 40 CFR 51.160(a)(2).
- The procedures must provide for the submission, by the applicant, of such information on:
  - (1) The nature and amounts of emissions to be emitted by it or emitted by associated mobile sources;
  - (2) The location, design, construction, and operation of such facility, building, structure, or installation as may be necessary to permit the State or local agency to make the determination referred to in paragraph (a) of this section, 40 CFR 51.160(c) .
- The procedures must identify types and sizes of affected entities subject to review and must discuss “the basis for determining which facilities will be subject to review,” 40 CFR 51.160(e).

The provisions contained in the Cotton Gin regulation SIP submittal meet the requirements in 40 CFR 51.160(a)(1) and (2) that each plan include legally enforceable procedures to determine whether the construction or modification of a facility, building, structure, or installation, or the combination of these will result in: (1) a violation of the applicable portions of the control strategy; or (2) interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state. See our TSD and section III.B of this notice for more details regarding how the Cotton Gin regulation complies with these requirements.

The Cotton Gin regulation SIP revision also meets the 40 CFR 51.160(c) requirements by requiring sources that apply for a minor NSR preconstruction permit using the alternative approach contained in Part 66 to provide information regarding the nature and amounts of emissions to be emitted and the location, design, construction, and operation of the facility in accordance with permit application requirements contained in Part 72. The minor NSR preconstruction permitting program contained in Part 72 is already part of the New Mexico SIP. The permit application content requirements are contained in Section 203 of Part 72 and are referenced as requirements of Part 66 in Section 201(A) of that Part.

The April 25, 2005, SIP revision also meets the 40 CFR 51.160(e) requirements by identifying the type of facility that will be subject to review under 40 CFR 51.160(a). New Mexico specifically identified that cotton ginning facilities meeting the definition contained in Part 66 may elect to utilize the alternative minor NSR permitting process contained in the Cotton Gin regulation. This includes the requirement that the cotton gin be a minor stationary source emitting 50 tons per year or less of particulate matter. The major source threshold for particulate matter for cotton ginning facilities is 250 tons per year. Cotton ginning facilities not meeting the

definition are not allowed to utilize the alternative minor NSR permitting approach contained in Part 66. See the TSD for more details regarding our technical review of the April 25, 2005, SIP revision submittal.

40 CFR 51.160 requires that the minor NSR SIP revision submittal be enforceable. In particular, 40 CFR 51.160(a) requires that the SIP revision be enforceable in order to ensure that the issuance of the minor NSR permit will not cause or contribute to a violation of any SIP control strategy and will not interfere with attainment and maintenance of the NAAQS. The September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled “Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency” provides EPA’s guidance for assessing whether a SIP revision submittal is sufficiently enforceable. We find that the new regulation meets the requirements of section 40 CFR 51.160(a), which requires that SIP revision submittals be enforceable. The submitted regulation specifically identifies the covered source; ensures that the permit issued by NMED will contain specific limits to ensure that the cotton gin’s potential to emit remains below major source thresholds for particulate matter emissions; and includes monitoring, recordkeeping, and reporting (MRR) provisions that establish how compliance will be determined and ensure that the PM<sub>10</sub> and PM<sub>2.5</sub> NAAQS are protected. For these reasons, EPA finds that the submitted regulation will ensure attainment and maintenance of the particulate matter NAAQS and will prevent violations of any of the New Mexico SIP’s control strategies. Under this submitted regulation, the State is able to determine if there will be an adverse impact on air quality.

EPA has recognized, for certain classes of sources, that it is appropriate for states to establish enforceable emission limits that serve to limit potential to emit through exclusionary

rules that apply to certain source categories. *See*, Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, Office of Air Quality Planning and Standards (OAQPS) entitled “Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound Use,” dated October 15, 1993; *See also*, Memorandum from John Seitz, Director, OAQPS entitled “Approaches to Creating Federally-Enforceable Emission Limits,” dated November 3, 1993. EPA also issued a guidance memorandum that provides guidance for addressing the minor source status under the Act for lower-emitting sources in eight source categories, including cotton gins. *See*, April 14, 1998, Memorandum entitled, “Potential to Emit (PTE) Guidance for Specific Source Categories” (hereinafter the 1998 memoranda). It provides technical information useful in devising practicable enforceable PTEs for small sources and identifies sources that are “true minors.”

Although not an exclusionary rule, the practicable enforceability criteria in the guidance memoranda serve as a way to measure whether the submitted regulation is practicably enforceable and therefore can ensure that issuance of the minor NSR permit will not cause or contribute to a violation of any SIP control strategy and will not interfere with attainment and maintenance of the NAAQS. The submitted regulation clearly identifies the category of sources that qualify for coverage. Moreover, EPA has found that cotton gins are technically justified for a streamlined approach (the 1998 memoranda). The regulation provides that a source notify the State of its coverage under the regulation by submitting a preconstruction application. The application must propose maximum allowable annual and hourly emissions and include proposed limitations to hours of operation and other limitations that will result in allowable emissions of no more than 50 tons per year. The NMED is authorized to modify any of the proposed limitations and controls to be more stringent, as necessary to ensure that applicable requirements

are met. Therefore, the regulation ensures that the applicable emission limits will be clearly specified by the NMED in the issued permit. The rule also includes terms and conditions for monitoring, recordkeeping, reporting, and testing requirements, as appropriate. The applicant is required to comply with the limits in the Part 66 issued permit. Violations of the emission threshold imposed by the submitted regulation can constitute violations of permitting and SIP requirements.<sup>1</sup>

*B. CAA 110(l) Analysis*

Section 110(l) of the Clean Air Act states:

Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of this Act.

Thus, under section CAA 110(l), this minor NSR SIP revision submittal must not interfere with attainment, reasonable further progress, or any other applicable requirement of the Act. EPA is approving the revision to the New Mexico minor NSR SIP incorporating the cotton gin minor NSR regulation because, based on our analysis, we have found that Part 66 does not interfere with attainment, reasonable further progress, or any other requirement of the Act.

As previously stated, the provisions contained in Part 66 include requirements and operational restrictions for cotton ginning facilities seeking a minor NSR permit that are specific to the control of particulate matter emissions and minimization of impacts from those emissions. All other pollutants will continue to be addressed via the requirements of the SIP's Part 72 minor

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<sup>1</sup> Under 20.2.72.218 NMAC, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of the terms or conditions of the permit. This enforcement measure applies notwithstanding any other provisions in the New Mexico SIP.

NSR preconstruction permitting program. Therefore, EPA evaluated the Cotton Gin regulation for its impact on attainment and reasonable further progress for  $PM_{10}$  and  $PM_{2.5}$  in a CAA 110(l) analysis. The submitted regulation only affects one specific source category, not unrelated emission sources. Therefore, there will be no cumulative effect of numerous unrelated sources. Moreover, there currently are only four cotton gins operating in the State, and only one of these four facilities has received the alternative minor NSR permit for its particulate matter emissions. The cotton gin that received the alternative minor NSR permit for its particulate matter emissions is located in Dona Ana County, but it is outside the boundaries of the Anthony  $PM_{10}$  nonattainment area. All four cotton gins are minor stationary sources of particulate matter.

A cotton gin obtaining a minor NSR permit under this new rule must meet, at a minimum, the technical equipment requirements and management practices in the rule. All burr hoppers must be completely enclosed. There can be no visible fugitive emissions from any door, vent, or window. Emissions from the gin yard, storage piles, roads, and vehicles must be controlled by watering, paving and cleaning, surfactants, or other equivalent means. There are opacity limitations on the cyclones, low pressure exhausts, and fuel-burning equipment. High pressure exhausts must be controlled by the use of a high efficiency cyclone dust collector and are subject to an opacity limitation. Low pressure exhausts must be controlled by the use of screens with a mesh size of 70 by 70 or finer (United States sieve), or the use of perforated condenser drums with holes not exceeding 0.045 inches in diameter and are subject to an opacity limitation. There must be a posted speed limit for all vehicles on unpaved haul roads and in unpaved yard areas of 10 miles per hour or less. Fuel burning equipment is limited to certain fuels. The NMED has the authority to require even more stringent requirements than those set forth above. Furthermore, under the submitted regulation, a cotton gin obtaining a minor NSR



permit under this regulation must be located at a minimum of 10 feet in all directions from the facility's property boundary. The cotton gin must also be at least 0.25 miles from any existing state park, recreation area, or school and at least three miles from any Class I area. The distance from the cotton gin to the property boundary must also meet minimum requirements based on the facility's  $PM_{10}$  emissions. These set back distance limitations are based upon the allowable emissions rather than production rates, thereby encouraging gins to use more stringent technical controls. The NMED has the authority to establish a more stringent set back limitation in any issued permit under this new rule, as necessary, to ensure that the facility will meet all other applicable requirements.

The entire state of New Mexico was designated attainment for the 1997  $PM_{2.5}$  NAAQS. Additionally, the entire state of New Mexico was designated attainment for the 2006  $PM_{2.5}$  NAAQS. The only area designated nonattainment for the  $PM_{10}$  NAAQS in New Mexico is Anthony, which is located in Dona Ana County. Dona Ana County does contain cotton gins, but these gins are located outside the boundaries of the Anthony designated nonattainment area. In New Mexico's November 8, 1991 SIP revision for the Anthony  $PM_{10}$  nonattainment area, the State demonstrated that  $PM_{10}$  emissions from existing cotton gins located in Dona Ana County did not have a significant impact on air quality in Anthony. As a result, New Mexico did not include control requirements for any point sources, including cotton gins, in its  $PM_{10}$  SIP revision for Anthony. EPA approved the  $PM_{10}$  SIP for Anthony on September 9, 1993. Annual emissions inventory information compiled by NMED for inventory year 2002 shows that annual emissions of  $PM_{10}$  resulting from cotton gins located in Dona Ana County are much less than the total  $PM_{10}$  emissions from both agricultural and non-agricultural emission sources in the county. The 2002 Dona Ana County emissions inventory data also shows that annual emissions of  $PM_{2.5}$

from cotton gins are much less than the total PM<sub>2.5</sub> emissions. There also is no new evidence that new minor source cotton gins would have a significant impact on air quality in Anthony. There is no evidence of growth in cotton gins since 1991, the date of the PM<sub>10</sub> SIP revision that EPA approved; in fact, at least two cotton gins have permanently shut down. Therefore, we expect that the impacts of PM<sub>10</sub> emissions from cotton gins on air quality in Dona Ana County, including in Anthony, would be small relative to the impacts from other emission sources. Ginning activity in New Mexico, including in Dona Ana County, is not expected to experience significant growth from current activity levels. When the Cotton Gin regulation was developed and adopted by New Mexico in 2005, seven commercial gins were registered in New Mexico, with six of the registered gins actually operating. Since 2005, three of these seven cotton gins have closed. Only one of the remaining four cotton gins is located in Dona Ana County. The current ginning capacity in New Mexico is more than sufficient to handle the State's cotton production and annual trends show decreasing cotton production since the State's adoption of the Cotton Gin regulation. Moreover, of the four currently operational cotton ginning facilities located in New Mexico, only one has received a permit through the Part 66 permitting process. Furthermore, if a new minor cotton gin source wished to construct in Dona Ana County and applied for a permit via the Part 66 alternative minor NSR preconstruction permitting process, the permit would limit the emissions of PM<sub>10</sub> or PM<sub>2.5</sub> to not more than 50 tons per year.

For all other areas of New Mexico located outside of the Anthony PM<sub>10</sub> nonattainment area, the Cotton Gin regulation is evaluated to determine if the SIP revision submission will interfere with attainment for PM<sub>2.5</sub> or PM<sub>10</sub>. As previously mentioned, based on the State's current ginning capacity and cotton production trends, cotton ginning activity in New Mexico is not expected to experience significant growth from current activity levels. If a new minor cotton

gin source is to be located in New Mexico, and the owner chooses the Part 66 alternative method, the cotton gin facility must apply for a minor NSR preconstruction permit under Part 66 and the permit will limit the emissions of particulate matter to not more than 50 tons per year. In addition, a source applying for a minor preconstruction permit under Part 66 is required to meet at a minimum the control requirements contained in the Cotton Gin regulation, which include control equipment requirements for high and low pressure exhausts, opacity limitations, implementation requirements for a fugitive dust management plan, fuel usage limitations for any fuel burning equipment, and location restrictions based on the facility's emission rates. Prior to the adoption of Part 66, New Mexico did not have specific regulations or control requirements for cotton ginning facilities. Instead, control requirements for new and modified cotton ginning facilities were established through the existing case-by-case preconstruction permitting program in the SIP (Part 72 for minor sources). The adoption of Part 66 establishes specific control requirements for particulate matter emissions that are not contained in the current New Mexico SIP for cotton ginning facilities seeking a minor preconstruction permit via the alternative minor NSR preconstruction permit approach. New Mexico also retains the authority and procedures to amend the Part 66 Cotton Gin regulation if federal standards or requirements change and the Cotton Gin regulation is no longer adequate to ensure that applicable requirements are met.

Our evaluation of the April 25, 2005, SIP submittal with respect to both  $PM_{10}$  nonattainment and attainment areas and to  $PM_{2.5}$  impacts demonstrates compliance with section 110(l) of the CAA and provides further basis for approval of this SIP revision.

#### **IV. Final Action**

EPA is taking direct final action to approve the revision to the New Mexico SIP submitted on April 25, 2005. Specifically, EPA is approving the incorporation of the new Cotton

Gin regulation in 20.2.66 NMAC, which establishes an alternative minor NSR preconstruction permitting process for issuing air quality permits to cotton ginning facilities for particulate matter emissions. EPA is finding that the revisions to the New Mexico Air Quality Control Act (AQCA) contained in the April 25, 2005, submittal, specifically the 2003 amendments to Section 74-2-7(C) and (O), related to permit issuance for cotton ginning facilities, provide sufficient legal authority for the NMED to adopt and enforce the 20.2.66 NMAC. See 40 CFR 51.230 and 50.231.

EPA is not acting on other severable portions of the April 25, 2005, SIP submittal.<sup>2</sup> Specifically, EPA is not taking action on the revisions submitted on April 25, 2005, to 20.2.72 NMAC – Construction Permits; 20.2.73 NMAC – Notice of Intent and Emissions Inventory Requirements; and 20.2.75 NMAC – Construction Permit Fees. These revisions have been or will be addressed by EPA in separate SIP revision reviews and rule actions.

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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<sup>2</sup> By severable, we mean that the portions of the SIP revisions related to the Cotton Gin regulation can be implemented independently of the remaining portions of the submittal, without affecting the stringency of the submitted rules. In addition, the remaining portions of the submittal are not necessary for approval of the provisions of 20.2.66 NMAC.

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 30, 2012.

Samuel Coleman, P.E.  
Acting Regional Administrator, EPA Region 6.

40 CFR part 52 is amended as follows:

**PART 52 - [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart GG – New Mexico**

2. The table in section 52.1620(c) entitled “EPA Approved New Mexico Regulations” is amended by adding a new entry for Part 66 (20.2.66 NMAC) in numerical order by part number to read as follows.

**§ 52.1620 Identification of plan.**

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(c) \* \* \*

**EPA Approved New Mexico Regulations**

State citation	Title/Subject	State approval/ effective date	EPA approval date	Comments
<b>New Mexico Administrative Code (NMAC) Title 20 – Environment Protection Chapter 2 – Air Quality</b>				
* * * * *				
Part 66	Cotton Gins	4/7/2005	[Insert date of <b>FR</b> publication] [Insert <b>FR</b> page number where document begins]	
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